

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

LARRY ELLSWORTH,

Plaintiff,

v.

CHARLES WEBB, ANDREW STAVE
and the COUNTY OF ASOTIN,

Defendants.

NO. CV-03-0148-EFS

**ORDER GRANTING MOTION TO AMEND
COMPLAINT AND CONTINUE TRIAL
DATE AND AMENDING SCHEDULING
ORDER**

A telephonic status conference was held in the above-entitled matter on April 15, 2005. Michael Kinkley and Dan Johnson appeared on behalf of Plaintiff. Michael McFarland and William Schroeder appeared on behalf of Defendants. The Court having reviewed the documents in the file and discussed the adoption of an amended scheduling order with counsel, now enters the following Amended Scheduling Order:

IT IS ORDERED:

1. Plaintiff's Motion to Amend Complaint and Continuing Trial Date (Ct. Rec. 51) is **GRANTED**.
2. Defendant's Motions for Summary Judgment (Ct. Recs. 38 and 46) are **DENIED AS MOOT**.
3. Parties shall contact Magistrate Judge Imbrogno and schedule a date for mandatory mediation to be completed by September 1, 2005.

1 4. Plaintiffs have until April 25, 2005, in which to file and
2 serve an Amended Complaint.

3 5. Defendants have until May 25, 2005, in which to file and serve
4 any Amended Answer.

5 6. Parties shall exchange supplemental FRCP 26(a)(1) material no
6 later than **June 1, 2005**.

7 7. Mr. Wasson's deposition shall be completed by June 17, 2005.

8 8. Mr. Edelblute's deposition shall be completed by July 1, 2005.

9 9. Plaintiff shall identify his experts and provide the FRCP
10 26(a)(2) reports of those experts to Defendants no later than **May 9,**
11 **2005**. Plaintiff shall also provide dates for which those experts can
12 be available for deposition.

13 10. Defendants shall identify their experts and provide the FRCP
14 26(a)(2) reports of those experts to Plaintiff no later than **June 17,**
15 **2005**. Defendants shall also provide dates for which those experts can
16 be available for deposition.

17 11. Plaintiff shall identify his rebuttal experts and provide the
18 FRCP 26(a)(2) reports of those experts to Defendants no later than
19 **July 3, 2005**. Plaintiff shall also provide dates for which those
20 experts can be available for deposition.

21 Parties are warned that failure to timely identify such experts
22 and provide such reports in accordance with Rule 26 and this
23 scheduling order may result in exclusion of such testimony absent good
24 reason. See *Wong v. Regents of the University of California*, 2004 WL
25 1837752 (9th Circ. August 18, 2004).

1 12. Any Interrogatories, Requests for Production, and Requests
2 for Admission shall be served on the opposing party no later than **June**
3 **22, 2005.**

4 13. All discovery, including depositions and perpetuation
5 depositions, shall be completed by **August 1, 2005.** Any motion to
6 compel discovery must be filed before the discovery cutoff date of
7 August 1, 2005 These deadlines may only be altered by Order of the
8 Court, for good cause shown.

9 14. **THE PARTIES SHALL FILE NO DISCOVERY EXCEPT THOSE PORTIONS**
10 **NECESSARY TO SUPPORT MOTIONS OR OBJECTIONS.**

11 15. All dispositive motions and Daubert motions shall be **FILED**
12 **AND SERVED** on or before **August 16, 2005.** This deadline may only be
13 altered by Order of the Court, for good cause shown. A Response to
14 the motion shall be filed and served within 21 days after service of
15 the motion. The Reply of the moving party shall be filed and served 5
16 days after service of the Response. No supplemental responses or
17 supplemental replies to any dispositive or Daubert motion may be filed
18 unless the Court grants a motion to file such documents. Contrary to
19 the local rules, dispositive and Daubert motions shall be noted for
20 hearing at least **45 days** after the date of filing.

21 16. Although Motions to Reconsider are disfavored, any Motion to
22 Reconsider shall be filed no later than ten (10) day after the filing
23 date of the Order which is the subject of the motion, and shall be
24 noted for hearing **without oral argument.** No responses to a motion to
25 reconsider shall be filed, unless the Court expressly requests
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1 responses or replies. Counsel shall follow CR 7(h) of the United
2 States District Court **Western District of Washington** local rules.

3 17. Witness/Exhibit lists shall be filed and served and exhibits
4 made available for inspection or copies provided to the parties on or
5 before **September 19, 2005**. Objections to witnesses/exhibits shall be
6 filed and served on or before **September 26, 2005**, AND SHALL BE HEARD
7 AT THE PRETRIAL CONFERENCE. All exhibits shall be pre-marked;
8 Plaintiffs' exhibits are to be numbered 1-499; Defendant's exhibits
9 shall be numbered 500-999.

10 18. Designation of substantive, as opposed to impeachment,
11 deposition testimony to be used at trial shall be highlighted in
12 yellow and served on or before **September 19, 2005**. Cross-designations
13 shall be highlighted in blue and shall be served on or before **October**
14 **3, 2005**.

15 19. Objections to any designated deposition testimony shall be
16 filed and served on or before **October 7, 2005**, and shall be heard and
17 resolved at the pretrial conference.

18 20. All unresolved substantive or evidentiary issues that may
19 foreseeably arise during trial shall be addressed by MOTIONS IN LIMINE
20 to be filed and served on or before **September 26, 2005**. Such motions
21 will be addressed and resolved at the pretrial conference.

22 21. A telephonic pretrial conference will be held at **11:00 a.m.**
23 **on October 25, 2005**. The parties shall call the court's public
24 conference line at (509) 376-8880 at the time scheduled for the
25 conference. The parties should advise the court one week in advance
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1 if they believe that an in-person pretrial conference would be
2 appropriate.

3 22. A JOINT PRETRIAL ORDER prepared in accordance with LR 16.1(b)
4 shall be filed on or before **October 14, 2005**. Counsel is instructed to
5 e-mail the Pretrial Order, in text only format, to
6 "Sheaorders@waed.uscourts.gov".

7 23. The list of exhibits contained in the Joint Pretrial Order
8 shall reflect the exhibit marking scheme described above. In
9 preparing the Joint Pretrial Order, the parties shall confer regarding
10 duplicative exhibits and determine which party will submit such
11 exhibits for trial.

12 24. In accordance with Local Rule 83.1(g), each party shall bring
13 to trial and to any other hearing on the merits, photocopies of their
14 relevant pre-marked exhibits for the Court, opposing counsel, and
15 testifying witness, unless it is not possible to do so because of the
16 nature of an exhibit. It is recommended that these photocopies be
17 organized into separate binders.

18 25. Trial briefs, requested voir dire and joint proposed jury
19 instructions shall be filed and served on or before **November 4, 2005**.
20 A courtesy copy of these documents shall also be submitted by e-mail
21 to Chambers. Counsel is instructed to e-mail these documents, in text
22 only format, to "Sheaorders@waed.uscourts.gov". Joint Jury
23 Instructions should address all issues involved, and shall include
24 instructions regarding the elements of each claim or defense, relief
25 sought, and a proposed verdict form. See also LR 51.1.

1 26. Any time-sensitive materials should be faxed to Chambers at
2 509-372-3051.

3 27. The estimated four day jury trial shall commence at **9:00 a.m.**
4 on **November 14, 2005**, in **Richland**, Washington. **Counsel shall meet**
5 **with the Court in Chambers at 8:30 a.m. on the day of trial.**

6 IT IS SO ORDERED. The District Court Executive is hereby
7 directed to enter this Order and to furnish copies to counsel.

8 **DATED** this 25th day of April 2005.

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10 S/ Edward F. Shea
EDWARD F. SHEA
11 United States District Judge
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